IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 15776 of 2004

Between:

Bhanu IVRCL Associates, a Joint Venture Firm, having its Principal Office at No. M22/3RT, Vijay Nagar Colony, Hyderabad - 57 and represented by its Authorised Signatory Mr. Y. Ch. Siva Reddy, S/o. Sri Pitchi Reddy, aged 47 years.

..... PETITIONER

AND

1 Customs, Excise & Service Tax Appellate Tribunal South Zonal

Bench, FKCCI - WTC Buildings, K.G. Road, Bangalore - 560 009.
2 The Commissioner of Central Excise, Hyderaba -I

Commissionerate, L.B. Stadium Road, Basheerabagh,

Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ, direction more particularly one in the nature of Mandmaus declaring (a) the order made in No. 1249 dt. 22-07-2004 of the 1st respondent in refusing to condone the delay of 125 days in filing the appeal against order No. C.EX. NO. 15/2003 dt. 2-5-03 of the 2nd respondent as illegal, b) to condone the delay of 125 days in filing the appeal before the 1st respondent and of the respondents.

Counsel for the Petitioner : MR.C.V.NAGARJUNA REDDY

Counsel for the Respondents : MR.ARAJASHEKAR REDDY (SC FOR CG)

The Court made the following O R D E R:

(Per the Hon'ble Sri Justice Bilal Nazki)

Heard learned counsel for the parties and with their consent, the writ petition is being disposed of at this stage.

This writ petition has been filed against the order of the Customs, Excise & Service Tax Appellate Tribunal, Bangalore, refusing to condone the delay of 125 days in entertaining the appeal. Against the same order, the appeal filed by the Department is already pending before the appellate Tribunal. Therefore, in our view, that was sufficient ground to condone the delay.

Accordingly, we allow this writ petition and direct the Tribunal to dispose of the appeal on merits. Learned counsel for the respondents submits that the writ petition is not maintainable in view of Section 36-G of the Central Excise Act,1944, as an appeal is provided before the High Court. Since the appeal is provided to the High Court, therefore, it would be only of academic interest, whether an appeal would lie or a writ petition would lie. No order as to costs.

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(BILAL NAZKI, J)

23rd September, 2004.

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(S.ANANDA REDDY, J)

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To

1 Customs, Excise & Service Tax Appellate Tribunal South Zonal

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3 Two C.D copies